

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 266 OF 2021

BETWEEN

STATE

DANIEL VIKASH

(aka Daniel Vikash Sami)

Counsel

Ms K Semisi and Ms T Kumar for the State

Mr J Rabuku and Mr L Cati for the Accused

Date of Hearing **1 May 2023 – 4 May 2023**

Date of Judgment : **29 September 2023**

Date of Sentence : **19 October 2023**

SENTENCE

- [1] The accused was charged with digital rape contrary to section 207(1) and (2)(b) of the Crimes Act. The charge alleged that the accused on 17 May 2021 penetrated the vagina of the victim with his fingers, without her consent.
- [2] The victim is a married woman. She was in her late twenties at the time of the offence and worked as a security officer for a private company.
- [3] The incident occurred in the afternoon of 17 May 2021 inside a toilet at Vinod Patel Building, CenterPoint during Covid-19 pandemic. On this day, the victim was rostered for daytime security duty at the Vinod Patel Building carpark.

- [4] At around 6 pm when the victim was about to complete her shift, she went to relieve herself before returning home. She used the male's toilet because the female's toilet was locked at the time. She was in the toilet relieving herself when the accused forced himself on her. She resisted and struggled but he was physically stronger than her. He forcefully kissed her on the mouth and squeezed her breasts by putting his hand inside her shirt. She was holding her pants but when she let it go during the struggle, he inserted his two fingers inside her vagina, pulled it out and inserted it again.
- [5] When the victim protested and told the accused that she was going to report him, he let her go. She was distraught when she came out of the toilet. She cried out to her colleagues that she was raped inside the toilet. She learnt that the accused was in the carpark. She went and confronted him and then reported the matter to police. She was medically examined on the same evening. She complained of extreme vaginal pain to the doctor. Fortunately, she did not sustain any physical injuries.
- [6] The accused is 37 years old. He is married and has a 15-year old daughter. Originally he is from Vanua Levu. He moved to Suva with his parents when he was in high school. He completed his high school studies and started work as a receiving clerk with a private company. Later he obtained a PSV license and started driving a taxi.
- [7] In 2008, the accused got married and with the help of his wife he started a small private transportation business with two vehicles that people could privately hire. The transport business is the main source of income for his family.

- [8] At the time of the offence the accused was self-employed. People who have used his transportation services have said that the accused is reliable and hardworking person.
- [9] The accused's senior pastor has provided a reference stating that the accused is a committed Christian and is the President of the Men's Fellowship in his church.
- [10] The accused seeks clemency but he is not remorseful. On 18 April 2012, the accused was convicted of indecently annoying a person. He was sentenced to 18 months imprisonment – 2 months to serve in prison and 16 months suspended for 2 years. Within 10 years the accused committed a more serious sexual offence.
- [11] The accused is diabetic and is on medications. But his medical condition is not exceptional to mitigate his crime.
- [12] Rape is the most serious sexual crime in the legislation. It causes considerable physical and psychological harm to the victim.
- [13] The aggravating factors are that the offence was committed in a public facility and in the course of the victim's employment as a security guard. Security services is a male dominant profession in Fiji. Not many women in Fiji join this profession. The courts duty is to provide women with protection and safe working environment, and in particular, against sexual offenders.
- [14] The maximum sentence prescribed for rape is life imprisonment. The tariff ranges from 7-15 years imprisonment (*Rokolaba v State* [2018] FJSC 12).

[15] I pick 7 years imprisonment as my starting point, add 2 years for the aggravating factors and deduct 1 year for the mitigating factors including 41 days remand period.

[16] The accused is sentenced to 8 years imprisonment with a non-parole period of 5 years.



A handwritten signature in black ink, appearing to be "D. Goundar", is written above a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Rabuku Lawyers for the Accused